

RENEWAL OF THE GENERALIZED SYSTEM OF  
PREFERENCES

MAY 24 (legislative day, MAY 21), 1984.—Ordered to be printed

Mr. DOLE, from the Committee on Finance,  
submitted the following

R E P O R T

[To accompany S. 1718]

The Committee on Finance, to which was referred the bill (S. 1718) to amend the Trade Act of 1974 to renew the authority for the operation of the Generalized System of Preferences, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

I. SUMMARY

The committee bill would reauthorize, with changes, title V of the Trade Act of 1974, the authority pursuant to which the President operates the Generalized System of Preferences (GSP). The GSP affords duty-free tariff treatment to products from developing countries, subject to certain conditions and limitations. The President's authority to provide such treatment expires January 3, 1985.

S. 1718 would authorize the President to continue the current program until January 3, 1995, subject to any changes required by the following substantive amendments to title V that were approved by the committee in S. 1718:

1. An amendment that would require the President to consider a beneficiary country's treatment of U.S. intellectual property rights (including patents, copyrights, and trademarks) with regard to various determinations of country and product eligibility. The bill requires the President to report to the Congress on his actions in respect to these requirements and those described in the following paragraph.

2. An amendment that would require the President to consider a beneficiary country's treatment of U.S. investments in his determinations under the various provisions conditioning and limiting the program's benefits.

3. An amendment excluding certain products from potential eligibility for duty-free treatment, including handbags, work gloves, flat goods, luggage, and leather wearing apparel.

4. An amendment requiring the President to conduct a general review of all GSP-eligible products within 2 years. Based on that review and the country and product eligibility factors that condition GSP benefits, the President would be authorized to halve the normal competitive need limits.

5. An amendment authorizing the President to waive competitive need limits in the national economic interest. Prior to exercising this authority, he must seek the advice of the International Trade Commission regarding possible adverse effects on U.S. industries.

## II. GENERAL EXPLANATION

### A. THE GENERALIZED SYSTEM OF PREFERENCES

One of the purposes of the Trade Act of 1974 was "to provide fair and reasonable access to products of less developed countries in the United States market." To this end, title V of the act authorized the President to operate a Generalized System of Preferences under which duty-free access to the U.S. market would be granted to developing countries under certain conditions and limitations. When the GSP of the United States was established, similar trade preference programs had already been established by other developed countries. Pursuant to a framework established by the General Agreement on Tariffs and Trade (GATT), such unilateral preference programs must be generalized, nondiscriminatory, and non-reciprocal.

Under the Act, both countries and products are certified for eligibility. Pursuant to section 502, the President may not designate as a beneficiary any developing country that, in summary, is—

1. a Communist country;
2. a member of a commodity cartel that unreasonably withholds a commodity from international trade (such as OPEC);
3. affording preferential treatment to the products of another country which significantly and adversely affects U.S. commerce;
4. failing to abide by international law with respect to expropriation disputes;
5. failing to cooperate with U.S. efforts to interdict unlawful narcotics trafficking;
6. failing to act in good faith with regard to arbitral awards to U.S. persons; or
7. giving sanctuary to international terrorists.

The ban posed by the last four criteria may be waived in the national interest. In addition to these seven requirements, other factors must also be considered by the President. These include a country's level of economic development and the extent it affords fair access to its markets and basic commodity resources.

Under section 503, the President also must designate the articles eligible for duty-free treatment from the beneficiary countries. The following articles are specifically excepted from duty-free treatment: (1) textiles subject to textile agreements; (2) watches; (3) import-sensitive electronics, steel, and glass products; (4) certain footwear; and (5) other import-sensitive articles as determined by the President in the context of this GSP. Duty-free treatment also cannot apply to any article that is the subject of import relief or national security import measures. Section 503(b) further establishes a rule of origin for eligible articles that, in general, requires an article to enter the United States directly from a beneficiary country, and contain at least 35 percent value from that country, consisting of the cost or value of materials produced there plus direct costs of manufacturing there.

Section 504 imposes limitations on duty-free treatment. A beneficiary country is deprived of that status with respect to particular articles under either of two conditions: (1) if the value of its exports to the United States of any article in any year exceeds an amount which bears the same ratio to \$25 million as the U.S. gross national product for the year earlier bears to the 1974 U.S. GNP (the 1983 limit thus determined was \$57.7 million); and (2) if the value of the exports equals or exceeds 50 percent of the value of the total imports of that article. These "competitive need" limitations may not apply if—

1. there has been an historical preferential trade relationship between the United States and such country, there is a treaty or trade agreement in force covering economic relations between such country and the United States, and such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce;

2. in the case of the 50-percent limitation, no like or directly competitive article was produced in the United States on January 3, 1975; or

3. if the ratio of the value of imports to \$1 million is less than the above-described GNP ratio.

Finally, a country may be redesignated for duty-free treatment for an article if imports fall below the competitive need limits in a year following that in which eligibility was lost.

Following encouragement by the committee in its report on the Trade Agreements Act of 1979, the President has also "graduated" countries with regard to certain products pursuant to his authority in section 504(a) of the act. That section authorizes withdrawal, suspension, or limitation of duty-free treatment based on consideration of the factors generally governing eligibility for beneficiary status. The committee's intent in providing competitive need limits and authorizing discretionary graduation was to encourage the beneficiary countries to assume increasingly the obligations of the international trading system as their economic progress allows, and to bring about a more effective distribution of GSP benefits among beneficiary countries.

## B. TRADE UNDER THE GSP

In 1983 \$10.8 billion of imported products entered the United States duty-free as GSP-eligible articles. This amount accounts for approximately four percent of total U.S. imports, and 0.5 percent of apparent U.S. consumption, as shown in the following chart:

TABLE 1.—1983 U.S. IMPORTS  
(FOB in billions)

Source	Amount	Percent of all imports
Beneficiary countries:		
GSP-free.....	\$10.8	4
Other.....	78.8	31
Nonbeneficiary countries.....	167.0	65
Total.....	256.6	100

Source: USTR.

The \$10.8 billion of GSP imports that entered duty-free in 1983 constitutes only 15 percent of the total imports of the GSP-eligible articles. Of the universe of potential eligible GSP imports, more articles were denied duty-free entry than received it, and together the potentially eligible imports both receiving and not receiving duty-free entry constituted less than half of the imports of those articles originating in non-eligible countries.

TABLE 2.—1983 IMPORTS OF GSP-ELIGIBLE ARTICLES

Source	Amount (billions)	Percent of all imports
Beneficiary countries:		
GSP-free.....	\$10.8	15
Dutiable.....	11.8	17
Other countries.....	48.8	68
Total.....	71.4	100

Source: USTR.

The committee notes with approval one particular trend indicating that the program is operating as intended. In 1981 the USTR began on a discretionary basis to "graduate" countries with regard to GSP eligibility for particular products, even though competitive need limitations had not been breached. The exercise of this discretionary authority, which was encouraged by this committee in its report on the Trade Agreements Act of 1979, rests on three factors: (1) the country's general level of development; (2) its competitiveness with regard to the particular product; and (3) overall U.S. economic interests, including the import sensitivity of the product sector. The following table illustrates the effect of these discretionary actions:

TABLE 3.—PRODUCT GRADUATION UNDER THE GSP

[In millions]

Year	Discretionary graduation	Competitive need exclusions	Total exclusions	GSP-free imports	Ratio of exclusions to GSP imports
1980.....	\$443	5,600	6,043	7,328	0.82
1981.....	651	6,782	7,433	8,395	0.89
1982.....	900	7,108	8,008	8,426	0.95
1983.....	1,211	10,661	11,872	10,765	1.11

Note.—Data shown for graduation and competitive need exclusions pertain to actions implemented in March of the following year.  
Source: USTR.

In May 1983 the International Trade Commission (ITC) reported the results of two analyses it made of U.S. imports under the GSP. (See An Evaluation of U.S. Imports Under the Generalized System of Preferences, U.S. ITC Pub. 1379, May 1983; Changes in Import Trends Resulting From Excluding Selected Imports From Certain Countries From the Generalized System of Preference, U.S. ITC Pub. 1384, May 1983). Chairman Eckes also testified on the ITC's findings in a hearing before the Subcommittee on International Trade, at which time he updated the ITC's conclusions. Among the principal conclusions of the ITC are:

1. U.S. GSP imports rose from \$5.2 billion in 1978 to \$8.5 billion in 1982, increasing at an annual rate of approximately 13 percent.

2. GSP imports accounted for 4.9 percent of total nonpetroleum imports in 1982, rising modestly from 4.1 percent in 1978. Because some sectors are more closed to GSP imports than others, the share of GSP imports relative to total imports varies among the nonpetroleum sectors of the U.S. economy. For example, GSP imports averaged 13.8 percent of total miscellaneous manufactures imports from 1978-82, but other sectors averaged a three to five percent ratio in the same time.

3. GSP imports have not resulted in significant increases in the overall import share of the U.S. market. Further, GSP imports accounted for approximately 0.5 percent or less of apparent U.S. consumption during 1978-82.

4. The countries benefiting most from invocation of the competitive need limitations on particular products are advanced developing countries and developed countries—not lesser developed countries.

5. Several factors limit the degree of market penetration by GSP imports, including the following: (a) the limited product coverage of GSP-eligible items, which averaged 36 percent of total imports in 1982; (b) the selective nature of the GSP program, which tends to exclude import "sensitive" commodities; (c) the generally moderate rates of duty on GSP-eligible items, which overall averaged slightly over 8 percent ad valorem in 1981; (d) the competitive-need provisions, the annual review of the program, and graduation, which act as checks in areas of rapidly rising GSP imports; (e) the temporary nature of the program, which unless renewed will terminate on January 4, 1985; and (f) the manufacturing limitations in many of the GSP-beneficiary countries, including limitations in technology, manufacturing capacity, basic infrastructure required to support manufacturing, and other inputs such as skilled labor and capital.

Finally, the ITC noted that in many areas where GSP imports have increased, it would appear to be at the expense of imports from developed countries; this substitution of imports for other imports tends to limit the impact of GSP imports on overall market penetration by imports.

The following table compiled by the Commission, reveals on a sector-to-sector basis the impact of the GSP program from 1978-1982.

TABLE 4.—U.S. SHIPMENTS, IMPORTS FOR CONSUMPTION, EXPORTS OF DOMESTIC MERCHANDISE, AND APPARENT CONSUMPTION, 1978-82 <sup>1</sup>

(Dollar amounts in millions)

Sector	Producers' shipments	Imports		Exports	Apparent consumption	Ratio of—		
		Total	GSP			GSP to total imports	Total imports to consumption	GSP imports to consumption
Agricultural, animal, and vegetable products:								
1978 .....	250,899	17,112	614	29,491	238,520	3.6	7.2	0.3
1979 .....	275,567	19,399	803	34,835	260,131	4.1	7.5	.3
1980 .....	301,707	20,023	1,323	40,733	280,997	6.6	7.1	.5
1981 .....	319,382	20,261	1,355	43,679	295,964	6.7	6.8	.5
1982 .....	324,393	19,038	902	37,142	306,289	4.7	6.2	.3
Forest products:								
1978 .....	151,199	8,501	269	5,774	153,926	3.2	5.5	.2
1979 .....	169,759	9,699	337	7,806	171,651	3.5	5.7	.2
1980 .....	178,485	9,252	339	9,609	178,128	3.7	5.2	.2
1981 .....	200,433	9,647	349	9,218	200,863	3.6	4.8	.2
1982 .....	197,275	9,021	316	8,482	197,814	3.5	4.6	.2
Textiles, apparel, and footwear:								
1978 .....	99,532	10,696	321	5,185	105,044	3.0	10.2	.3
1979 .....	105,550	11,015	262	7,190	109,375	2.4	10.1	.2
1980 .....	111,122	12,039	370	8,845	114,316	3.1	10.5	.3
1981 .....	117,008	13,984	412	8,348	122,644	2.9	11.4	.3
1982 .....	113,997	14,704	361	6,639	122,062	2.5	12.1	.3
Chemical and related products: <sup>2</sup>								
1978 .....	180,225	10,201	464	16,829	173,597	4.6	5.9	.3
1979 .....	226,221	11,766	536	23,553	214,434	4.6	5.5	.3
1980 .....	244,416	12,490	612	29,004	227,902	4.9	5.5	.3
1981 .....	268,134	13,506	782	30,749	250,891	5.8	5.4	.3
1982 .....	281,388	13,341	820	29,174	265,555	6.2	5.0	.3
Minerals and metals:								
1978 .....	203,833	24,323	929	11,495	216,661	3.8	11.2	.4
1979 .....	234,919	27,156	1,219	19,530	242,545	4.5	11.2	.5
1980 .....	227,635	31,751	1,357	25,090	234,296	4.3	13.6	.6
1981 .....	233,035	34,386	1,511	19,953	247,468	4.4	13.9	.6
1982 .....	199,020	29,247	1,527	14,760	213,507	5.2	13.7	.7
Machinery and equipment:								
1978 .....	359,704	48,146	1,339	59,504	348,346	2.8	13.8	.4
1979 .....	391,910	53,630	1,649	70,260	375,280	3.1	14.3	.4
1980 .....	402,570	60,078	1,748	84,307	378,341	2.9	15.9	.5
1981 .....	432,570	68,542	2,262	95,536	405,576	3.3	16.9	.6
1982 .....	424,581	72,360	2,601	87,291	409,650	3.6	17.7	.6
Miscellaneous manufactures:								
1978 .....	65,162	9,277	1,271	9,446	64,993	13.7	14.3	2.0
1979 .....	72,190	10,508	1,515	11,460	71,238	14.4	14.8	2.1
1980 .....	79,200	11,583	1,602	13,720	77,063	13.8	15.0	2.1
1981 .....	83,590	13,298	1,758	14,894	81,994	13.2	16.2	2.1
1982 .....	85,200	14,133	1,947	15,290	84,043	13.8	16.8	2.3

Footnotes at end of table.

TABLE 4.—U.S. SHIPMENTS, IMPORTS FOR CONSUMPTION, EXPORTS OF DOMESTIC MERCHANDISE, AND APPARENT CONSUMPTION, 1978-82 <sup>1</sup>—Continued

[Dollar amounts in millions]

Sector	Producers' shipments	Imports		Exports	Apparent consumption	Ratio of—		
		Total	GSP			GSP to total imports	Total imports to consumption	GSP imports to consumption
Total, all sectors:								
1978.....	1,310,554	128,257	5,207	137,724	1,301,087	4.1	9.9	.4
1979.....	1,476,116	143,172	6,322	174,635	1,444,654	4.4	9.9	.4
1980.....	1,545,135	157,216	7,351	211,307	1,491,043	4.7	10.5	.5
1981.....	1,654,152	173,625	8,429	222,377	1,605,400	4.9	10.8	.5
1982.....	1,625,854	171,844	8,473	198,778	1,598,920	4.9	10.7	.5

<sup>1</sup> The trade data provided in this table are based on trade in schedules 1 through 7 of the Tariff Schedules of the United States (imports) and schedule B (exports); trade under schedule 8 and other special provisions is not included. Import values used in the report are based on Custom value; export values are based on f.a.s. value, U.S. port of export.

<sup>2</sup> Excludes data on petroleum, natural gas, and related products.

Finally, the committee notes that 19 industrialized countries have already extended their GSP programs, and Canada is expected to do so this year. The experience of the United States accords with that of the other developed countries offering similar trade preferences. In 1983, the Organization of Economic Cooperation and Development published "The Generalised System of Preferences: Review of the First Decade," a comprehensive report on OECD members' GSP programs. As a whole, OECD members' imports from developing countries grew at a faster rate between 1976 and 1980 than imports from all sources, and GSP-eligible imports grew at an even faster rate. The following data demonstrate these trends, and that the U.S. experience is unexceptional compared to that of other developed countries.

TABLE 5.—AVERAGE ANNUAL PERCENTAGE GROWTH OF LDC IMPORTS, 1976-80

	Total imports world	Covered by GSP	Imports from beneficiaries	
			Accorded GSP treatment	Residual dutiable imports (non-GSP, excluding oil)
Australia.....	17.1	56.5	58.8	12.8
Austria.....	20.4	10.3	29.1	27.2
Canada.....	11.9	16.7	18.5	14.3
Finland.....	20.9	41.4	42.8	17.0
Japan (FY <sup>1</sup> ).....	22.7	27.9	30.7	11.4
New Zealand (FR <sup>1</sup> ).....	21.4	14.3	NA	24.3
Norway.....	9.5	29.9	27.4	12.2
Sweden.....	15.8	27.5	25.1	-2.8
Switzerland.....	25.8	29.2	26.3	18.8
United States.....	18.3	21.9	23.8	14.8
European Economic Community.....	21.2	25.1	24.6	8.2
OECD preference-giving countries (trade-weighted average) .....	19.6	25.1	<sup>2</sup> 26.8	12.2

<sup>1</sup> FY—for period 1976 to 1980-81.

<sup>2</sup> Excluding New Zealand.

Note.—Growth rates are based on values expressed in U.S. dollars.

Source: OECD, "The Generalised System of Preferences," p. 58 (1983).

### III. THE COMMITTEE BILL

In sum, S. 1718, as amended, would extend the current GSP until January 3, 1995, but with certain changes. These include additional authority for the President to reduce the competitive need units applied to competitive products; an exemption of the least-developed countries from competitive need limits; and authority to waive the competitive need limits. The bill mandates a study, to be completed within 2 years, of GSP-eligible articles based on beneficiary countries' competitiveness generally and with regard to particular articles. Based on that review, the President may impose lower competitive need limits, setting new ceilings on duty-free imports at one-half the normal level. The result will be that products will be graduated much more rapidly. Competitive need limits, however, may be waived by the President on a product-specific basis if he determines it is in the national interest to do so, based *inter alia* on assurances that the country will provide equitable and reasonable access to its markets, protect U.S. intellectual property, and reduce trade-distorting investment practices. These mechanisms are intended to promote the lowering of developing country trade barriers.

#### A. AMENDMENTS TO BASIC AUTHORITY

Sections 2 of S. 1718 would renew the President's authority to operate the GSP through January 3, 1995. The current authority expires on January 3, 1985.

The Congress provided an initial 10-year authorization for the GSP in order for the program to have sufficient time in which to demonstrate its effects, but still allow timely review of its operation, whether it has fulfilled the purposes for which it is intended, and whether it serves a continuing need. In this regard, the committee over the past decade has exercised its oversight responsibilities carefully, including the receipt of extensive testimony at hearings on November 25, 1980; August 4, 1983; and January 27, 1984. The latter two hearings specifically addressed S. 1718.

The committee is satisfied that the GSP is operating as the Congress intended; that it poses for U.S. industries and workers no significant threat of injurious import competition; and that the program remains a viable development tool and is important to the economic and foreign policy interests of the United States. The committee therefore concluded that, as somewhat modified by the amendments contained in S. 1718, the GSP should be renewed for another 10 years.

In creating the GSP, Congress provided for mechanisms to preclude designations of import-sensitive items that threatened injurious competition, and also to encourage removal of tariff preferences for product sectors in which a beneficiary country becomes fully competitive and no longer requires the preference incentive. The committee has noted in previous reports the importance of achieving a greater distribution of GSP benefits and of encouraging the assumption by the more advanced developing countries of the obligations and responsibilities of the international trading system.

The import data described heretofore show that GSP imports are an insignificant component of total U.S. imports and domestic con-



sumption, and that these ratios have remained constant. Indeed, the ITC found that only 12 of 650 commodity groups have incurred any significant import penetration from GSP imports. Further, the extensive annual GSP product review conducted by the USTR has ensured that concerns of both domestic industries and importers are fully heard and that serious attention is given to sectors in which product removal or discretionary graduation is in order. The following table indicates how this process has performed in recent years:

TABLE 6.—PRODUCT REVIEW UNDER GSP

(Number of petitions requesting)

	Product additions			Product removals			Country graduation		
	Received	Reviewed	Granted	Received	Reviewed	Granted	Received	Reviewed	Granted
1976.....	63	61	37	48	42	5			
1977.....	38	36	10	44	41	2			
1978.....	173	91	23	27	27	3			
1979.....	220	112	54	33	30	4			
1980.....	118	77	39	4	4	0			
1981.....	294	60	31	9	3	0	5	4	2
1982.....	333	89	49	7	4	1	21	16	7
1983.....	352	53	31	10	7	4	17	11	9
1984.....	223	35	22	16	14	7	15	14	10
Total.....	1,814	614	296	198	172	26	58	45	28

Source: U.S. Trade Representative.

The trend has been increasingly toward restricting the value of GSP-eligible products that actually receive duty-free entry. In 1983, more eligible products were denied duty-free treatment than received it. The committee is satisfied that with the changes provided in the bill, the provisions of existing law governing the product eligibility process will continue to be properly administered and will be adequate to the task for which they are designed.

Although GSP imports are not large, the program remains an important development tool. Approximately 40 percent of U.S. exports go to the 140 developing countries that are GSP beneficiaries. U.S. exports to these countries increased at an average annual rate of 12.5 percent since 1976, compared to 9.6 percent growth in exports to developed countries. The debt crisis in the developing world and the precipitous drop in U.S. exports to these countries in the past three years have heightened the importance of encouraging development through trade. The GSP schemes of the developed countries offer opportunities for the beneficiary countries to increase their exports, enabling them to import more while diversifying their economies. Further, to the extent that the GSP in fact results in greater exports, the volume of such imports into the United States generally comes at the expense of developed countries' exports; thus, total import penetration in particular product sectors generally is not affected.

For these reasons, the committee approved an extension of the authority for the GSP with some changes. Section 3 of S. 1718 proposes one change in this basic authority. Section 501 of the Act currently requires the President, in proclaiming GSP duty-free treat-

ment, to have due regard for three factors, including the action's effect on furthering the development of the beneficiary countries; comparable efforts by other developed countries; and the action's anticipated impact on like or directly competitive products. Section 3 of the bill would add a fourth factor: "The extent of the beneficiary developing country's competitiveness with respect to eligible articles."

The factors enumerated in section 501 are intended as guides to the President's overall conduct of the program. The amendment made by section 3 will serve to emphasize the Congress' concern that the current policy of discretionary graduation will be maintained. Further, the committee expects these factors to play a considerable role in the President's general review of eligible articles required by section 6 of the bill, in which new limitations are established for preferential tariff treatment. The four factors will also be important to the President's consideration of a waiver of the competitive need limitations authorized in section 6. In making both determinations, the committee intends that the President apply this new fourth factor as an estimate of general economic progress in the beneficiary country, and not as a strict measure of comparability to a competitive U.S. industry.

#### B. COUNTRY ELIGIBILITY

Section 502 of the 1974 Trade Act, as described above, defines the circumstances in which a country may be designated as eligible for GSP benefits. Subsection (b) enumerates factors that, with certain limited exceptions, bar countries from eligibility. Subsection (c) further sets forth several factors of which the President must take account in making his eligibility determination. Section 4 of S. 1718 amends these two subsections of existing law to bring into the President's decisionmaking process the matter of a potential beneficiary country's treatment of U.S. intellectual property rights and trade as it is affected by investment practices.

During the course of its review of S. 1718, the committee received extensive testimony on the growing and highly damaging practice of counterfeiting. U.S. producers increasingly face unfair competition in U.S. and world markets from foreign-made products that violate their intellectual property rights, including patents, copyrights, and trademarks. The counterfeited products not only cause lost sales, but ruin product reputations and marketing networks as well. The International Trade Commission recently estimated that in 1982, U.S. firms lost \$6-8 billion in domestic and export sales due to foreign product counterfeiting and similar trade practices; for five sectors, the estimated employment loss was 131,000 jobs. U.S. firms participating in the Commission's investigation cited countries in East Asia as the most prevalent source of the products. Most of these countries are GSP beneficiaries.

The committee approved several amendments to S. 1718 that will direct the President to consider a beneficiary country's practices with respect to intellectual property rights when he is determining a country's status under the program. Section 502(b)(4) currently requires the President to deny beneficiary status to a country that has, under subparagraphs (a), (b), or (c), "expropriated \* \* \* prop-

erty" of a U.S. national without adhering to international law regarding procedural fairness and compensation. Because these criteria could be interpreted to be directed only at takings of tangible property, section 4(a) of the bill amends subsection (b)(4) to make clear that the subsection also applies to intangible property, including patents, trademarks, or copyrights. Thus, action by a foreign beneficiary government or government instrumentality that effectively seizes or expropriates intellectual property rights of a U.S. national will require the President to terminate further GSP benefits to such country.

Section 4(b) of the bill, as incorporated into S. 1718 by the committee, would add two additional factors to those set forth currently in section 502(c) which must be considered by the President in the designation process and in all other determinations regarding country or product eligibility. The first would require the President to consider the extent to which a country is providing under its law adequate and effective means for foreign nationals not only to secure, but also effectively to exercise and to enforce, exclusive rights in intellectual property.

To determine whether a nation provides "adequate and effective means," the President should consider the extent of statutory protection for intellectual property (including the scope and duration of such protection), the remedies available to aggrieved parties, the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals, the ability of foreign nationals effectively to enforce their intellectual property rights on their own behalf, and whether the country's system of law imposes formalities or similar requirements that, in practice, are an obstacle to meaningful protection. The term "foreign nationals" is intended to refer to U.S. nationals and nationals of other countries with whom U.S. nationals have a contractual or similar relationship with respect to the sale or licensing of intellectual property; for example, a non-U.S. licensee of the rights owned by a U.S. national.

The committee recognizes that the new subparagraph (5) does not provide a single, objective test for determining whether the law of a foreign country provides adequate and effective protection for intellectual property, because this is not a standard susceptible to such a simplistic test. It is anticipated, however, that the President will consult with appropriate parties, including the U.S. Copyright Office and the Patent and Trademark Office, to fashion a set of criteria to be applied consistently and objectively.

The second amendment to current law made by section 4(b) would further require the President to consider the extent to which a beneficiary country has taken action to modify inward investment policies and practices that distort U.S. trade. In particular, the committee is concerned that U.S. export opportunities, which often are generated by U.S. investments abroad, are increasingly thwarted by requirements of host countries that U.S. firms limit their imports from the United States or that, as a condition of approval on an investment, firms agree to performance requirements; for example, producing a certain level of exports. Such measures are replacing more traditional forms of import restrictions throughout the world as serious trade barriers. The committee con-

siders it to be entirely appropriate to raise these trade barriers as issues with regard to a country's entitlement to GSP benefits.

#### C. INELIGIBLE ARTICLES

Section 503(c) of the 1974 Trade Act enumerates several articles which the President cannot designate as eligible for duty-free treatment. The committee bill would include additional items in this category. The articles are handbags, flat goods, work gloves, luggage, and leather wearing apparel, which were not eligible for duty-free treatment under GSP on April 1, 1984. These items already are excluded administratively under the program, but the committee determined that to prevent their possible designation, a statutory exception was warranted similar to that accorded certain other products.

The items encompassed by this amendment are classified in the Tariff Schedules of the United States under items 705.35; 705.85; 705.86; 706.05-.16; 706.21-.32; 706.34; 706.36; 706.38; 706.41; 706.43; 706.55; 706.62; and 791.76.

#### D. LIMITATIONS ON PREFERENTIAL TREATMENT

Section 504 of the 1974 Act authorizes the President to withdraw, to suspend, or to limit the duty-free treatment accorded by the GSP, and establishes "competitive need limits" that set a ceiling on benefits that countries may receive for particular products. Duty-free treatment for an article is removed if a country's exports of the article to the United States in one year exceed in value either (1) an amount producing a ratio of that amount to \$25,000,000 that is greater than the ratio of the U.S. gross national product (GNP) for the preceding calendar year to the U.S. GNP for 1974, or (2) 50 percent of total U.S. imports of the article. The ceiling set under the first test for 1983 was approximately \$57.7 million. In addition to these mandatory limits on benefits, the President has authority to graduate articles on a discretionary basis.

Section 6 of S. 1718 would retain these basic limitations of current law, and would provide additional authority to reduce the benefit limits further. Moreover, the amendments proposed in section 6 would authorize the President to waive the limits in recognition of beneficiary country action on trade matters of concern to the United States. This new authority is designed to further the original aims of the Congress to achieve a broad distribution of GSP benefits, and at the same time to encourage developing countries to provide greater market access to U.S. exporters and greater protection of U.S. intellectual property, for example.

Under the bill, section 504(a) first would be amended to require the President, within 3 years of the date of enactment, to submit a detailed written report to Congress on the extent to which eligible countries are in compliance with the factors in section 501 and 502(c). In addition, the President's report shall include a full discussion of any action he has taken under this section to withdraw, to suspend, or to limit GSP benefits to any country that has failed to comply with such factors.

In delegating this discretionary authority to the President, it is the intent of the committee that the President will vigorously exer-

cise the authority to withdraw, to suspend, or to limit GSP eligibility of noncomplying countries. The U.S. Trade Representative's Office shall consult with interested U.S. industry representatives, particularly those who are actively engaged in, or seek to engage in trade and investment in the beneficiary developing countries. Where valid and reasonable complaints are raised by U.S. firms concerning a beneficiary country's market access policy or protection of intellectual property rights, for example, it is expected that such interests will be given prominent attention by the President in deciding whether to modify duty-free treatment for that country. Finally, the President must periodically advise Congress on the measures he has taken to respond to legitimate industry complaints regarding noncompliance with the factors in sections 501 and 502(c).

Section 6(b) of the bill amends the competitive need limits authority of existing law. Section 504(c) would be amended to require a general review by the President of all GSP-eligible articles based on the country and product eligibility requirements of section 501 and 502(c). This review, which is distinct from the product reviews that will continue as under existing law, must be completed within two years. The general review will seek to identify articles in which a beneficiary country has demonstrated, compared to other beneficiary countries, that it has achieved sufficient competitiveness in a particular product line so that it is appropriate to trigger faster graduation from benefits. The committee understands that the following factors, already established in law and administrative procedure, will govern the President's determinations in the general product review:

- (1) the developmental level of individual beneficiaries;
- (2) the beneficiary country's competitiveness in a particular product;
- (3) the overall interests of the United States;
- (4) the effect such action will have on furthering the economic development of developing countries;
- (5) whether or not the other major developed countries are extending generalized preferential tariff treatment to such product or products;
- (6) the anticipated impact of such action on United States producers of like or competitive products; and
- (7) the extent to which the beneficiary country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country.

In addition to these established factors, the bill requires that two more criteria apply to the President's determinations. These are: (1) effective recognition of U.S. intellectual property rights (new section 502(c)(5)); and (2) the extent to which a country has taken action to reduce trade-distorting investment practices (new section 502(c)(6)).

On the basis of the review, the President will, in effect, halve the normal competitive need limits for articles meeting the test of "sufficient degree of competitiveness." Thus, these products will be graduated when imports exceed in value an amount that (1) bears the same ratio to \$25 million as the U.S. GNP for the preceding

year bears to the U.S. GNP for 1984, or (2) is 25 percent of total imports for the year.

In practice, these more stringent competitive need limits will most affect products from the advanced developing countries that are the major program beneficiaries. These countries offer the greatest opportunities for U.S. export growth, but in many cases have been slow to adopt in this regard the obligations and responsibilities of the international trading system. The committee thus intends that the general review emphasize opportunities for market access in its competitiveness determinations.

To promote further the goal of securing recognition of important U.S. trade interests, the committee bill allows the President to waive the application of competitive need limits in the following circumstances: (1) the ITC has provided advice on whether any U.S. producers are likely to be adversely affected by the proposed waiver; (2) the President determines, based on the ITC advice and the eligibility criteria of sections 501 and 502(c) of the act, that the waiver is in the U.S. national economic interest; and (3) this determination is published in the Federal Register.

This waiver authority is intended to encourage advanced developing countries to adopt policies commensurate with increasing development—a goal of GSP programs. The bill requires considerable weight to be given to whether such a country is affording equitable and reasonable access for U.S. exporters to its markets and basic commodity resources, and the extent to which it affords adequate and effective recognition of intellectual property rights. It is expected that the waiver will be exercised only in circumstances clearly satisfying these tests and advancing the intent supporting this authority. It is also anticipated that the waiver will not be used in any instance where it appears likely that a U.S. industry would be adversely affected. The waiver will remain effective until the President determines that changed circumstances no longer warrant its invocation.

Although the committee approved the waiver provision of S. 1718 as introduced, it amended the bill to require, as a condition of exercising the waiver, that the President first receive advice from the ITC on whether exercise of the waiver authority is likely to affect adversely U.S. producers. The committee concluded that there should be an independent review of the President's use of this authority. The ITC is not required to conduct a hearing on such matters, although whether to do so is within the Commission's discretion if it determines a hearing is warranted by the complexity or nature of the trade and industry involved. The President is barred from waiving competitive need limits in the absence of advice from the ITC. Further, the committee expects the President to provide the ITC with the information necessary for the agency to make an informed judgment on the waiver's effects, including the extent of the proposed waiver.

The standard of "adversely affected" is intended to require the Commission to report any likely detrimental impact on U.S. industries without regard to whether a firm or an industry would be considered injured under standards elsewhere promulgated in U.S. trade laws. The committee further intends that the Commission's

report include the degree to which use of the proposed waiver would contribute to the likelihood of such effects. This information will ensure that no waiver of competitive need limits will be made without full cognizance of its potential effects.

Section 504(c)(4) of the act, as amended by section 6 of S. 1718, would maintain a provision of current law that authorizes a waiver of competitive need limits on an article-by-article basis in strictly limited circumstances that, in effect, were intended to be applicable solely to the Philippines. These circumstances are when the President determines with respect to a country that (1) there has been an historical preferential trade relationship with the country; (2) there is a treaty or trade agreement in force covering economic relations between the country and the United States; and (3) the country does not discriminate against, or impose unjustifiable or unreasonable barriers to U.S. commerce. At the time of enactment of the 1974 Act, the United States and the Philippines were negotiating a treaty on economic relations that was expected to provide for reciprocal conditions for trade and investment.

The United States and the Philippines have never entered into such an agreement, and the waiver has never been exercised. In renewing this provision of section 504(c), the committee seeks to encourage the Philippines' authorities to engage in renewed trade discussions leading to greater reciprocal trade and increased export opportunities for U.S. producers. The waiver, however, should not be exercised absent clear commitments regarding better treatment for U.S. exporters and investors.

The committee bill also maintains a provision of current law (section 504(c)(2)) that authorizes the President to restore preferential treatment once it has been withdrawn because import levels breached the ceilings set by the competitive need limits. Redesignation for eligibility would occur whenever imports for a subsequent calendar year decreased to a level below the competitive need ceilings. The committee bill would authorize the redesignation under the stated criterion for articles losing preferential treatment as a result either of the annual product review under normal competitive need limits, or the new general review required by this bill that may result in lower competitive need limits.

The committee bill further would amend present section 504(c) to include a new subsection (c)(6), authorizing the exemption of least-developed beneficiary countries from the application of the benefit limitations established in subsection (c). Under this provision the President must, before July 4, 1985, and periodically thereafter, determine which countries are entitled to be excluded from the application of subsection (c). His determination will be based on the considerations and criteria for country eligibility set forth in sections 501 and 502(c); in particular, the President must consider the level of economic development of the country. At least 60 days before a determination under this provision is finalized, the President must notify the Congress of his decision.

As a practical matter, few least-developed countries are capable of achieving a level of export competitiveness that would subject them to loss of preferential treatment under the program's competitive need limits. An important goal of S. 1718 is to encourage a greater dispersion of the GSP program's benefits among the 140

countries potentially eligible to take part in it. The committee intends that the exemption authorized by this section be used to further this goal for countries satisfying its criteria. The committee expects that this waiver authority will be exercised with respect to countries included on the list of nations recognized by the United Nations as least developed. That list currently includes the following countries:

TABLE 7.—*Countries recognized by the U.N. as least developed*

*Afghanistan	*Ethiopia	Rwanda
Bangladesh	Gambia	Sao Tome and Principe
Benin	Guinea	Sierra Leone
Bhutan	Guinea-Bissau	Somalia
Botswana	Haiti	Sudan
Burundi	*Laos	Tanzania
Cape Verde	Lesotho	Togo
Central African Republic	Malawi	Uganda
Chad	Maldives	Upper Volta
Comoras	Mali	Western Somon
Djibouti	Nepal	*Yemen (PDR)
Equatorial Guinea	Niger	Yemen (Sana)

\*Not a beneficiary country under the U.S. GSP.

Finally, S. 1718 would continue two other provisions of existing law relating to limitations on preferential treatment. The first, section 504(d) currently exempts from the competitive need limitation established in section 504(c)(1)(B)—graduation upon imports of an article exceeding 50 percent of total imports of it—if a like or directly competitive article was not produced on January 3, 1975. The committee bill would up-date this provision to January 3, 1985.

Further, section 504(d) authorizes the President to exempt from the application of the same competitive need limit any article of which the value of imports did not exceed a certain dollar amount in the preceding calendar year. The amount is a value not in excess of an amount which bears the same ratio to \$1,000,000 as the U.S. GNP for that next year bears to the U.S. GNP for 1979. The committee bill retains this provision because it reduces the administrative burdens of the Customs Service and provides greater certainty for U.S. exporters and importers for articles involved in a de minimus amount of trade.

### III. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee states that the bill was ordered favorably reported without objection.

### IV. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the cost and budgetary impact of the bill:

S. 1718 would continue present legislative authority to accord duty-free entry to eligible products from eligible countries. Because (1) thousands of products originating in over 100 countries are potentially eligible for such preferential access; (2) there are numer-



ous conditions and limitations on eligibility of both products and countries; and (3) because the operation of the program in part is discretionary, the committee states that it is impracticable to provide an estimate of the costs of the program. As noted in the following report of the Congressional Budget Office, the bill would not affect budget outlays or tax expenditures.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., May 24, 1984.*

HON. ROBERT DOLE,  
*Chairman, Committee on Finance,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has examined S. 1718, the Generalized System of Preferences Renewal Act of 1984. The bill would renew present legislative authority to accord duty-free entry to eligible products from eligible countries. Under current law, the authority would expire January 3, 1985. The bill would extend the authority until January 3, 1995.

Estimating the revenue loss from this bill is impossible due to the number of products and countries eligible for duty-free entry and the discretionary nature of the program. The bill would not affect budget outlays or tax expenditures.

With best wishes.

Sincerely,

ERIC HANUSHEK  
*(For Rudolph G. Penner).*

#### V. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee states that the provisions of the committee bill will impose no new regulatory burdens on any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no new paperwork requirements. The bill authorizes continued operation of a trade preference program without substantially modifying the law governing its current operation.

#### VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of XXVI of the Standing Rules of the Senate, the changes in existing law made by the bill as reported are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

#### TRADE ACT OF 1974

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Sec. 501. Authority to extend preferences.  
Sec. 502. Beneficiary developing country.  
Sec. 503. Eligible articles.

Sec. 504. Limitations on preferential treatment.  
 [Sec. 505. Time limit on title; comprehensive review.]  
 Sec. 505. Termination of duty-free treatment.

\* \* \* \* \*

## TITLE V—GENERALIZED SYSTEM OF PREFERENCES

### SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for—

- (1) the effect such action will have on furthering the economic development of developing countries;
- (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized references with respect to imports of products of such countries; [and]
- (3) the anticipated impact of such action on United States producers of like or directly competitive products[.]; and
- (4) *the extent of the beneficiary developing country's competitiveness with respect to eligible articles.*

### SEC. 502. BENEFICIARY DEVELOPING COUNTRY

\* \* \* \* \*

(b) No designation shall be made under this section with respect to any of the following:

Australia	Japan
Austria	Monaco
Canada	New Zealand
Czechoslovakia	Norway
European Economic Community member states	Poland
Finland	Republic of South Africa
Germany (East)	Sweden
Hungary	Switzerland
Iceland	Union of Soviet Socialist Republics

In addition, the President shall not designate any country a beneficiary developing country under this section—

- (1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement on Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;
- (2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an un-

reasonable level and to cause serious disruption of the world economy;

(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property, *including patents, trademarks, or copyrights*, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, *including patents, trademarks, or copyrights*, so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, *including patents, trademarks, or copyrights*,

unless—

(D) the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly finishes a copy of such determination to the Senate and House of Representatives;

(5) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances (as listed in the schedules in section 812

of title 21) produced, processed, or transported in such country from entering the United States unlawfully;

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute; and

(7) if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.

Paragraphs (4), (5), (6), and (7) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country; **[and]**

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country **[.]**;

*(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights; and*

*(6) the extent to which such country has taken action to reduce trade distorting investment practices and policies (including export performance requirements).*

\* \* \* \* \*

#### SEC. 503. ELIGIBLE ARTICLES.

\* \* \* \* \*

(c)(1) The President may not designate any article as an eligible article under subsection (a) of this section if such article is within one of the following categories of import-sensitive articles—

(A) textile and apparel articles which are subject to textile agreements,

(B) watches,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear articles specified in items 700.05 through 700.27, 700.29 through 700.53, 700.55.23 through 700.55.75, and 700.60 through 700.80 of the Tariff Schedules of the United States,

(F) import-sensitive semimanufactured and manufactured glass products, [and]

(G) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not eligible articles for purposes of this title on April 1, 1984, and

[(G)] (H) any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this subchapter for any period during which such article is the subject of any action proclaimed pursuant to section 2253 of this title or section 1862 or 1981 of this title.

#### SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a) (1) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 2461 of this title with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this subchapter. In taking any action under this subsection, the President shall consider the factors set forth in sections 2461 and 2462(c) of this title.

(2)(A) *The President shall as necessary advise the Congress and, by no later than January 4, 1988, the President shall submit to the Congress a report on the application of sections 501 and 502(c), with particular emphasis on—*

(i) *the extent to which beneficiary developing countries have—*

(I) *assured the United States that such countries will provide equitable and reasonable access to the markets and basic commodity resources of such countries.*

(II) *provided adequate and effective means for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights, and*

(III) *taken action to reduce trade-distorting investment practices and policies (including export performance requirements), and*

(ii) *the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country based on his assessment of the factors cited in this subsection, which has failed to take adequately the actions described in clause (i).*

(b) The President shall, after complying with the requirements of section 2462(a)(2) of this title, withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 2462(b) of this title. Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order revoking his designation of such country under section 2462 of this title.

[(c)(1) Whenever the President determines that any country—

[(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to \$25,000,000 as the gross national product of the United States for the preceding calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1974, or

[(B) except as provided in subsection (d) of this section, has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year,

then, not later than 90 days after the close of such calendar year, such country shall not be treated as a beneficiary developing country with respect to such article, except that, if before such 90th day, the President determines and publishes in the Federal Register that, with respect to such country—

[(i) there has been an historical preferential trade relationship between the United States and such country,

[(ii) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

[(iii) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

then he may designate, or continue the designation of, such country as a beneficiary developing country with respect to such article.

[(2) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated, subject to the provisions of section 2462 of this title, a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in paragraph (1) of this subsection during the preceding calendar year.

[(3) For purposes of this subsection, the term “country” does not include an association of countries which is treated as one country under section 2462(a)(3) of this title, but does include a country which is a member of any such association.

[(d) Subsection (c)(1)(B) of this section does not apply with respect to any eligible article if a like or directly competitive article is not produced on January 3, 1975, in the United States. The President may disregard subsection (c)(1)(B) of this section with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to \$1,000,000 as the gross national product of the United States for that calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1979.]

*(c)(1) Whenever the President determines that any country—*

*(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the*

same ratio to \$25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974, or

(B) except as provided in subsection (d), has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year.

then, not later than 90 days after the close of such calendar year, such country shall not be treated as a beneficiary developing country with respect to such article.

(2)(A) Not later than January 4, 1987, and periodically thereafter, the President shall conduct a general review of eligible articles based on the considerations described in sections 501 or 502(c).

(B) If, after any review under subparagraph (A), the President determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

(i) "1984" for "1974" in subparagraph (A), and

(ii) "25 percent" for "50 percent" in subparagraph (B).

(3)(A) Not earlier than January 4, 1987, the President may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before the 90th day after the close of the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the President—

(i) receives the advice of the International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waiver.

(ii) determines, based on the considerations described in sections 501 and 502(c) and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

(iii) publishes the determination described in clause (ii) in the Federal Register.

(B) In making any determination under subparagraph (A), the President shall give great weight to—

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C) Any waiver granted pursuant to this paragraph shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(4) Except in any case to which paragraph (2)(B) applies, the President may waive the application of this subsection if, before the 90th day after the close of the calendar year for which a determination

described in paragraph (1) was made, the President determines and publishes in the Federal Register that, with respect to such country—

(A) there has been an historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

(5) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 501 and 502, if imports of such article from such country did not exceed the limitations in paragraph (1) (after application of paragraph (2)) during the preceding calendar year.

(6)(A) This subsection shall not apply to any beneficiary developing country which the President determines, based on the considerations described in sections 501 and 502(c), to be a least-developed beneficiary developing country.

(B) The President shall—

(i) amake a determination under subparagraph (A) with respect to each beneficiary developing country before July 4, 1985, and periodically thereafter, and

(ii) notify the Congress at least 60 days before any such determination becomes final.

(7) For purposes of this subsection, the term 'country' does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

(d)(1) Subsection (c)(1)(B) (after application of subsection (c)(2)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

(2) The President may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to \$1,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United states for calendar year 1979.

(e) No action pursuant to section 2461 of this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 1319 of this title on coffee imported into Puerto Rico.

#### SEC. 505. TIME LIMIT ON TITLE; COMPREHENSIVE REVIEW.

(a) No duty-free treatment under this subchapter shall remain in effect after the date which is 10 years after January 3, 1975.

(b) On or before the date which is 5 years after January 3, 1975, the President shall submit to the Congress a full and complete report of the operation of this subchapter.



**SEC. 505. TERMINATION OF DUTY-FREE TREATMENT.**

*No duty-free treatment provided under this title shall remain in effect after January 3, 1995.*

\* \* \* \* \*

